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New York, New York 10153
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Facsimile: (212) 310-8007
Jared R. Friedmann
Jacqueline Marcus
Jennifer Brooks Crozier

*Attorneys for Debtors
and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
	:
In re	:
	:
SEARS HOLDINGS CORPORATION, et al.,	:
	:
Debtors.¹	:
	:
-----X	

Chapter 11
Case No. 18-23538 (RDD)
(Jointly Administered)

**DECLARATION OF WILLIAM GALLAGHER IN SUPPORT OF
DEBTORS' MOTION TO COMPEL TURNOVER OF ESTATE PROPERTY**

Pursuant to 28 U.S.C. § 1746, I, William "Bill" C. Gallagher, hereby declare as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); SR – Rover de Puerto Rico, LLC (f/k/a Sears, Roebuck de Puerto Rico, Inc.) (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Rover Brands Business Unit, LLC (f/k/a Sears Brands Business Unit Corporation) (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 130 W. 44nd St., 17th Fl., New York, NY 10036.

1. I submit this declaration in support of the *Motion of Debtors to Compel Turnover of Estate Property* filed concurrently herewith.²

2. I am a Managing Director of M-III Partners, LP (“**M-III**”), the financial advisor to Sears Holdings Corporation and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”).

3. I began my tenure at M-III in October 2018 and immediately thereafter began working for and on behalf of the Debtors. Over the last two years, I have gained an extensive knowledge of the Debtors’ real-estate assets. Specifically, I have worked to manage and monetize the Debtors’ real estate assets in connection with these chapter 11 cases. Inclusive of my time at M-III, I have almost forty years of experience in the financial industry, principally in the arenas of credit risk management, real-estate financing, mergers and acquisitions, and financial advisory services. I have approximately ten years of experience in restructuring, having been retained by a large real-estate finance company in 2009 to manage the restructuring of its assets. Furthermore, I have been actively involved in the Debtors’ efforts to recover proceeds related to the Litigation and Insurance Claims as related to the Second APA Settlement Agreement.

4. Except as otherwise indicated, all statements in this Declaration are based on my personal knowledge of the Debtors’ operations and finances gleaned during the course of my engagement with the Debtors, my discussions with the Debtors’ senior management, other members of the M-III team, and the Debtors’ other advisors, and my review of relevant documents and/or based upon my experience. If called to testify, I could and would testify to each of the facts

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Motion to Compel Turnover of Estate Property* (the “**Motion to Compel**”).

set forth herein based on such personal knowledge, discussions, review of documents, and/or opinion.

Litigation and Insurance Claims Dispute

5. On September 17, 2020, the Parties entered into the Second APA Settlement Agreement pursuant to which the Parties agreed, among other things, to fully and finally resolve certain Additional APA Disputes. On October 16, 2020, the Bankruptcy Court entered the Order Approving the Second APA Settlement Agreement.

6. The Parties ultimately agreed in the Second APA Settlement Agreement that the Debtors were entitled to thirty-two (32) Litigation and Insurance Claims under the APA—fourteen (14) of which were Closed Claims—and that Transform was entitled to eighty-eight (88) Litigation and Insurance Claims. A schedule of the Litigation and Insurance Claims is attached to Schedule 1 of the Second APA Settlement Agreement.

7. After entry of the Order Approving the Second APA Settlement, M-III immediately embarked upon an effort to recover the proceeds of the Litigation and Insurance Claims, including the Debtors' Closed Claims that Transform had acknowledged and agreed belonged to the Debtors under the APA.

8. I quickly learned through communications with local counsel to the Debtors that Transform had actually recovered—and deposited into its bank accounts—the proceeds of at least some of the Debtors' Closed Claims.

9. On or around October 21, 2020, through communications with local counsel for the Debtors, I confirmed that Transform had instructed counsel to established a retainer account at his firm using the proceeds of at least two of the Debtors' Closed Claims -- the Titusville claim and the St. Joseph claim (the “**Retainer**”). I also learned that (i) the Retainer had been used to pay for

certain of Transform's legal expenses; (ii) Transform had deposited into its own bank accounts a \$252,391 check from local counsel made out to Sears Roebuck & Co. (a Debtor entity) compromising the remaining proceeds of the Titusville claim (the "**Titusville Proceeds**"); and (iii) Transform had deposited into its bank accounts a \$12,950 check from local counsel made out to Kmart Corporation (another Debtor entity) comprising the proceeds of the St. Joseph claims (the "**St. Joseph Proceeds**"). *See Exhibit A* attached hereto, true and correct copies of (i) a check dated September 12, 2019 issued by Thompson Brody & Kaplan LLP and payable to the order of Kmart Corporation in the amount of \$12,950.00 and (ii) a check dated December 11, 2019 issued by Thompson Brody & Kaplan LLP and payable to the order of Sears Roebuck & Co. in the amount of \$252,391.54.

10. M-III continued to investigate the disposition of the Debtors' Closed Claims as well as the distribution of any proceeds related to those Claims. Because the Debtors had transferred their books and records to Transform in connection with the Sale Transaction and because Transform's property claims department has been managing all of the Litigation and Insurance Claims post-Closing, Transform was M-III's primary (if not sole) source for such information.

11. On or around November 4, 2020, M-III contacted Transform seeking information about four of the Debtors' Closed Claims. Transform responded that it could no longer provide M-III with information concerning the Debtors' Closed Claims and that the Debtors should contact counsel for Transform regarding the Claims. *See Exhibit B* attached hereto, email exchange with M-III and Transform.

12. Since then, Transform has refused to provide M-III with any further information concerning the Debtors' Closed Claims.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: November 19, 2020
New York, New York

/s/ William C. Gallagher
William C. Gallagher
Managing Partner
M-III Advisory Partners, LP

Exhibit A

CASH ONLY IF ALL CHECKLOCK® SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

Thompson Brody & Kaplan, LLP
161 N. Clark St., Suite 3575
Chicago, IL 60601

01H 4026 FIFTH THIRD BANK
ACC. 69250

4595

9/12/2019

PAY TO THE ORDER OF **KMart Corporation** \$12,950.00

Twelve Thousand Nine Hundred Fifty and 00/100 DOLLARS

KMart Corporation

MEMO **Kmart 4026 v. Mart Plaza LLC**

004595 071923909 7904840746

ENDORSE HERE
D-2497 9
20191108
3752190508
101 CHI-012670

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE

>111000025<
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LACK END GTD
BANK OF AMERICA

As the issuer, this CheckLock®
Secure Plus check may help reduce
your risk of fraud and liability.
To learn how to protect your business,
call our check fraud experts at
1-800-535-0289 or visit
www.fraudfighter24.com/fraudinfo-intl

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DIFFICULT DUE TO CHECKLOCK® HIGH SECURITY FEATURES.
DO NOT CASH IF:
• The Check is torn or damaged.
• The Check is altered or tampered with.
• The Check is signed by someone other than the issuer.
• The Check is signed in blank.
• The Check is signed after the date.
• The Check is signed after the time.
• The Check is signed after the place.
• The Check is signed after the person.
• The Check is signed after the thing.
• The Check is signed after the right.
• The Check is signed after the power.
• The Check is signed after the interest.
• The Check is signed after the obligation.
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• The Check is signed after the responsibility.
• The Check is signed after the accountability.
• The Check is signed after the answerability.
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• The Check is signed after the unbecomeliness.
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Posting Date	2019 Nov 08
DB/CR Indicator	Debit
Amount	\$12,950.00
Posting Check Number	4595
Posting Account Number	7904840746
Posting Seq Number	39178034
Tran Code	0
ABA/RT Number	7192390

CASE 1:19-cv-01000-UNA Document 1-1 Filed 08/14/19 Page 1 of 1
 SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR GOPYING
 4642
 Thompson Brody & Kaplan, LLP
 IOLTA
 161 N. Clark St., Suite 3575
 Chicago, IL 60601
 12/11/2019
 PAY TO THE ORDER OF Sears Roebuck & Co. \$**252,391.54
 Two Hundred Fifty-Two Thousand Three Hundred Ninety-One and 54/100*****
 DOLLARS
PROTECTED AGAINST FRAUD
 Sears Roebuck & Co.
 MEMO 2195 Sears v. Titusville
 004642 0719239091 7904840746

[illegible]

Posting Date	2019 Dec 17
DB/CR Indicator	Debit
Amount	\$252,391.54
Posting Check Number	4642
Posting Account Number	7904840746
Posting Seq Number	36660792
Tran Code	0
ABA/RT Number	7192390

Exhibit B

From: Richard Kellner <rk@ncarisk.com>
Sent: Wednesday, November 18, 2020 7:59 AM
To: Litz, Dominic; Friedmann, Jared
Cc: William Gallagher
Subject: FW: Sears Estate Open Property Claims

FYI

From: Menendez, Dale <Dale.Menendez@transformco.com>
Sent: Monday, November 9, 2020 10:15 AM
To: mj <mj@ncarisk.com>
Cc: 'Richard Kellner' <rk@ncarisk.com>; wgallagher@m3-partners.com
Subject: RE: Sears Estate Open Property Claims

MJ,

Sorry, as I explained to Richard we are not at liberty to discuss the closed claims or provide information or documentation on them. Please go thru counsel if there are questions or requests on the closed cases. Thanks for understanding.

Dale Menendez, CPCU, MBA | Director, Property Claims – Risk Mgmt | Transform SR Holding Management, LLC | 3333 Beverly Road E3-240B; Hoffman Estates, IL 60179 | Direct 847-286-3157; Cell 847-757-9862; Dale.Menendez@transformco.com

From: mj [<mailto:mj@ncarisk.com>]
Sent: Friday, November 06, 2020 11:31 AM
To: Menendez, Dale <Dale.Menendez@transformco.com>
Cc: 'Richard Kellner' <rk@ncarisk.com>; wgallagher@m3-partners.com
Subject: RE: Sears Estate Open Property Claims
Importance: High

Enterprise Security Team Alert: This email originated from outside of the organization. Please use caution when opening messages from external sources.

Hello Dale,

Please provide the requested information as mentioned in the below email.

Looking forward to hearing from you.

Thanks in advance.

Regards,
Marcus



Marcus Jones

Assistant to Richard A. Kellner, President

Office: 516-802-2094

email: mj@ncarisk.com

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From: Richard Kellner <rk@ncarisk.com>

Sent: Wednesday, November 4, 2020 9:00 AM

To: Menendez, Dale <Dale.Menendez@transformco.com>

Cc: William Gallagher <wgallagher@m3-partners.com>; NCA Task <asana@ncarisk.com>

Subject: RE: Sears Estate Open Property Claims

Weil does not know who outside counsel was on the closed claims. Please provide this information for the four claims.

Thanks in advance for your assistance.

From: Menendez, Dale <Dale.Menendez@transformco.com>

Sent: Wednesday, November 4, 2020 8:33 AM

To: Richard Kellner <rk@ncarisk.com>

Cc: William Gallagher <wgallagher@m3-partners.com>; NCA Task <asana@ncarisk.com>

Subject: RE: Sears Estate Open Property Claims

Sorry Richard, you need to contact Weil on the closed claims.

Dale Menendez, CPCU, MBA | Director, Property Claims – Risk Mgmt | Transform SR Holding Management, LLC | 3333 Beverly Road E3-240B; Hoffman Estates, IL 60179 | Direct 847-286-3157; Cell 847-757-9862; Dale.Menendez@transformco.com

From: Richard Kellner [<mailto:rk@ncarisk.com>]

Sent: Wednesday, November 04, 2020 7:30 AM

To: Menendez, Dale <Dale.Menendez@transformco.com>

Cc: William Gallagher <wgallagher@m3-partners.com>; NCA Task <asana@ncarisk.com>

Subject: RE: Sears Estate Open Property Claims

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Thanks for the quick reply Dale. There are a few loose ends that we need clarity on regarding the 4 closed claims below that we were hoping to discuss with outside counsel that handled those matters. Please provide contact details for outside counsel for each of the four matters.

We will get back to you on Stockton.

From: Menendez, Dale <Dale.Menendez@transformco.com>
Sent: Wednesday, November 4, 2020 8:22 AM
To: Richard Kellner <rk@ncarisk.com>
Cc: William Gallagher <wgallagher@m3-partners.com>
Subject: RE: Sears Estate Open Property Claims

Morning Richard,

In response to your inquiry on 1884 King of Prussia, 1111 Colorado Springs, 1300 Oak Brook and 3527 Philadelphia. These are closed claims and you should contact Weil on any of the closed claims. Sorry we could not be of assistance on those.

As for 45575 Stockton. It is an open claim with a settlement/ release for \$20,886 pending signature. There is no attorney assigned to this claim. It is believed to be a Transform owned claim so we are uncertain how you want to handle it. Shall we execute the release on behalf of Transform and have the settlement proceeds sent to MIII? Please let us know. Thanks.

Dale Menendez, CPCU, MBA | Director, Property Claims – Risk Mgmt | Transform SR Holding Management, LLC | 3333 Beverly Road E3-240B; Hoffman Estates, IL 60179 | Direct 847-286-3157; Cell 847-757-9862; Dale.Menendez@transformco.com

From: Richard Kellner [<mailto:rk@ncarisk.com>]
Sent: Wednesday, November 04, 2020 7:00 AM
To: Menendez, Dale <Dale.Menendez@transformco.com>
Cc: William Gallagher <wgallagher@m3-partners.com>
Subject: RE: Sears Estate Open Property Claims

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Thanks, Dale.

Please also advise who counsel was on the following claims.

Store	Date of Loss	Counsel
45575 Stockton	7/24/2019	No attorney
1884 King of Prussia	10/1/2010	Closed Claim

1111 Colorado Springs	8/3/2018	Closed Claim
1300 Oak Brook	1/21/2019	Closed Claim
3527 Philadelphia	11/16/2018	Closed Claim

From: Menendez, Dale <Dale.Menendez@transformco.com>

Sent: Tuesday, November 3, 2020 10:12 AM

To: Richard Kellner <rk@ncarisk.com>

Cc: William Gallagher <wgallagher@miiipartners.com>

Subject: RE: Sears Estate Open Property Claims

Richard,

Yes, we can add counsel contact info.

Also, think about what additional you would like to see and we will work to accommodate as much as possible.

These attorneys have already been in touch with MIII. To get you started the attorneys are:

Robert Wilens

Richard Sprock

John McCabe

And attached is their outlook card.

Dale Menendez, CPCU, MBA | Director, Property Claims – Risk Mgmt | Transform SR Holding Management, LLC | 3333 Beverly Road E3-240B; Hoffman Estates, IL 60179 | Direct 847-286-3157; Cell 847-757-9862; Dale.Menendez@transformco.com

From: Richard Kellner [<mailto:rk@ncarisk.com>]

Sent: Tuesday, November 03, 2020 9:00 AM

To: Menendez, Dale <Dale.Menendez@transformco.com>

Cc: William Gallagher <wgallagher@miiipartners.com>

Subject: RE: Sears Estate Open Property Claims

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Thanks, Dale.

Would it be possible to add a column with outside counsel contact details for each of the claims?

From: Menendez, Dale <Dale.Menendez@transformco.com>

Sent: Tuesday, November 3, 2020 9:52 AM

To: Richard Kellner <rk@ncarisk.com>
Cc: William Gallagher <wgallagher@miiipartners.com>
Subject: RE: Sears Estate Open Property Claims

Morning Richard,

As agreed last week, attached is the excel list of open estate property recovery claims for discussion.

After your review, please call me to discuss so we can determine how the estate wants to best handle and resolve these going forward.

Thanks, and I look forward to our discussion.

Dale Menendez, CPCU, MBA | Director, Property Claims – Risk Mgmt | Transform SR Holding Management, LLC | 3333 Beverly Road E3-240B; Hoffman Estates, IL 60179 | Direct 847-286-3157; Cell 847-757-9862; Dale.Menendez@transformco.com

From: Richard Kellner [<mailto:rk@ncarisk.com>]
Sent: Tuesday, November 03, 2020 6:50 AM
To: Menendez, Dale <Dale.Menendez@transformco.com>
Cc: William Gallagher <wgallagher@miiipartners.com>
Subject: RE: Sears Estate Open Property Claims

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How are you progressing in pulling together the update on the remaining open property claims owned by the estate?

Thanks in advance.

From: Richard Kellner <rk@ncarisk.com>
Sent: Tuesday, October 27, 2020 2:19 PM
To: Menendez, Dale <Dale.Menendez@transformco.com>
Cc: William Gallagher <wgallagher@miiipartners.com>
Subject: RE: Sears Estate Open Property Claims

Thanks again for your time last week.

When do you think you will be able to provide the update on the remaining open property claims owned by the estate?

From: Menendez, Dale <Dale.Menendez@transformco.com>
Sent: Tuesday, October 20, 2020 3:59 PM
To: Richard Kellner <rk@ncarisk.com>
Subject: RE: Sears Estate Open Property Claims

I have another meeting a 1PM Central tomorrow but if your schedule is tight I can be rescheduled my call. I am better at 2PM Central. Let me know.

Dale Menendez, CPCU, MBA | Director, Property Claims – Risk Mgmt | Transform SR Holding Management, LLC | 3333 Beverly Road E3-240B; Hoffman Estates, IL 60179 | Direct 847-286-3157; Cell 847-757-9862; Dale.Menendez@transformco.com

From: Richard Kellner [<mailto:rk@ncarisk.com>]
Sent: Tuesday, October 20, 2020 2:43 PM
To: Menendez, Dale <Dale.Menendez@transformco.com>
Subject: RE: Sears Estate Open Property Claims

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Thanks for the quick response, Dale.

How about 1pm CT tomorrow?

From: Menendez, Dale <Dale.Menendez@transformco.com>
Sent: Tuesday, October 20, 2020 3:42 PM
To: Richard Kellner <rk@ncarisk.com>
Subject: RE: Sears Estate Open Property Claims

Hi Richard,

I have to many calls and meeting tomorrow Wednesday.

However, Thursday I am open all day except 10 to 11AM. Friday I am open all day.

Please let me know.

Dale Menendez, CPCU, MBA | Director, Property Claims – Risk Mgmt | Transform SR Holding Management, LLC | 3333 Beverly Road E3-240B; Hoffman Estates, IL 60179 | Direct 847-286-3157; Cell 847-757-9862; Dale.Menendez@transformco.com

From: Richard Kellner [<mailto:rk@ncarisk.com>]
Sent: Tuesday, October 20, 2020 2:34 PM
To: Menendez, Dale <Dale.Menendez@transformco.com>
Subject: Sears Estate Open Property Claims

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Dale,

I hope you are well and staying safe.

I have recently been requested by the estate to coordinate with you to get an understanding of the remaining open property claims which the estate has retained an interest in.

How does your schedule look this week for a quick call to discuss?

Thanks in advance.

Regards,
Rich

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